	Case 3:09-cv-01185-BEN-WVG	Document 24	Filed 03/03/11	PageID.218	Page 1 of 2
1					
2					
3					
4					
5					
6					
7					
8					
9	UNITED STATES DISTRICT COURT				
10	SOUTHERN DISTRICT OF CALIFORNIA				
11					
12	JEFFERSON SISON,	)	Civil No. 09-cv-1	185-BEN (WV	(G)
13	Petitioner,	)	ORDER DENYII		
14	v.	)	CERTIFICATE (	JF APPEALAI	BILITY
15	LARRY SMALL, Warden.	)			
16	Respondent.	)			
17		)			
18	Pro se Petitioner Jefferson Sison filed a petition for a writ of habeas corpus under 28 U.S.C.				
19	§ 2254. The Magistrate Judge recommended denying the petition. The Report and Recommendation				
20	was adopted on November 18, 2010. On November 30, 2010, Petitioner filed a notice of appeal. He has				
21	not requested a certificate of appealability for any of the claims presented in his Petition. "[I]f the				
22	prisoner neglects to request a certificate of appealability before going forward, the court of appeals can				
23	grant him one sua sponte." Hayward v. Marshall, 603 F.3d 546, 554 (9th Cir. 2010) (en banc, abrogated				
24	on other grounds by <i>Swarthout v. Cooke</i> , 502 U.S, 2011 WL 197627 (Jan. 24, 2011) (per curiam).				
25	Here, however, the case has been remanded for the limited purpose of granting or denying the				
26	certificate. See Order of March 2, 2011, Appeal No. 10-57045.				
27					
28					

## **Legal Standard**

A certificate of appealability is authorized, "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To meet this standard, Petitioner must show that the issues are debatable among reasonable jurists or that the questions are adequate to deserve encouragement to proceed further. *Hayward*, 603 F.3d at 553. The showing necessitates something above "the absence of frivolity." *Id*.

## **Discussion**

This Court has considered the issues raised by Petitioner with respect to whether they satisfy the standard for issuance of a certificate of appealability, and determines that none meet that standard.

## **Conclusion**

Based upon the foregoing, the Court hereby denies the issuance of a certificate of appealability.

DATED: March 3, 2011

Hon. Roger T. Benitez

United States District Judge